

IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

|                           |   |                            |
|---------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, | ) | Criminal Case No. 18-00010 |
|                           | ) |                            |
| Plaintiff,                | ) |                            |
|                           | ) |                            |
| vs.                       | ) |                            |
|                           | ) |                            |
| JOHN D. WALKER,           | ) |                            |
| aka JON WALKER,           | ) |                            |
| MARVIN R. REED,           | ) |                            |
| KENNETH R. CROWE,         | ) |                            |
| PHILLIP T. KAPP,          | ) |                            |
|                           | ) |                            |
| _____ Defendants.         | ) |                            |

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MICHAEL J. BORDALLO,  
MAGISTRATE JUDGE  
(Via telephone)  
MAY 6, 2020; 9:00 A.M.  
HAGATNA, GUAM

**Motion Hearing on an Amended Motion for Hearing to Address  
Potential Conflict of Interest and a Motion for Protective  
Order, Prevent Removal of Evidence, Schedule Inspection,  
Prevent Harassment of Witnesses**

09:01:50AM  
09:01:54AM  
09:01:58AM  
09:02:01AM

Proceedings recorded by *mechanical stenography*.

Veronica F. Flores, CSR-RPR  
Official Court Reporter  
520 W. Soledad Avenue  
Hagatna, Guam 96910

APPEARANCES

Appearing on behalf of plaintiff:

**OFFICE OF THE UNITED STATES ATTORNEY**

**BY: STEPHEN LEON GUERRERO, AUSA** (via telephone)

**MARIE MILLER, SAUSA** (via telephone)

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Appearing on behalf of Defendant Walker:

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**BY: JAMES M. MAHER, ESQ.** (via telephone)

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**BY: MACK K. MARTIN, ESQ.** (via telephone)

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Appearing on behalf of Defendant Reed:

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Appearing on behalf of Defendant Crowe:

**LAW OFFICE OF LUJAN & WOLFF**

**BY: DAVID J. LUJAN, ESQ.** (via telephone)

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**BY: GREGORY NICOLAYSEN, ESQ.** (via telephone)

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**BY: EDWARD A. MCCONWELL, ESQ.,** (via telephone)  
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Appearing on behalf of Defendant Hansen:

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Appearing on behalf of Defendant Rogers:

**LAW OFFICE OF GUMATAOTAO & POLE**

**BY: WILLIAM B. POLE, ESQ.** (via telephone)  
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ALSO PRESENT:

John Walker, Defendant (via telephone)

Marvin Reed, Defendant (via telephone)

Kenneth Crowe, Defendant (via telephone)

Phillip Kapp, Defendant (via telephone)

Viranousith Khamvongsa, IRS agent (via telephone)

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I N D E X

Page

Court to take matters under advisement and  
issue decision shortly

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Veronica F. Flores, CSR-RPR  
Official Court Reporter  
520 W. Soledad Avenue  
Hagatna, Guam 96910

1 May 6, 2020; 9:01 a.m.; Hagatna, Guam 09:00AM

2 \* \* \* 09:00AM

3 THE CLERK: Your Honor, all the parties are 09:01AM  
4 present. 09:01AM

5 THE COURT: All right, go ahead and call the case 09:01AM  
6 then. 09:01AM

7 THE CLERK: Okay, Your Honor. Come to order, the 09:01AM  
8 District Court of Guam is now in session, the Honorable 09:01AM  
9 Michael J. Bordallo presiding on Criminal Case 18-00010, *USA* 09:01AM  
10 *versus John D. Walker, Marvin R. Reed, Kenneth R. Crowe,* 09:01AM  
11 *Phillip T. Kapp, Randall Rogers, and Hansen Helicopters* on a 09:01AM  
12 Motion Hearing on an Amended Motion for Hearing to Address 09:01AM  
13 Potential Conflict of Interest and a Motion for Protective 09:01AM  
14 Order, Prevent Removal of Evidence, Schedule Inspection, 09:01AM  
15 Prevent Harassment of Witnesses. 09:02AM

16 Counsels, please state your appearance, starting 09:02AM  
17 with the government. And we'll go from Defendant 1 all the 09:02AM  
18 way down. Thank you. 09:02AM

19 MR. LEON GUERRERO: Buenas and hafa adai, Your 09:02AM  
20 Honor, this is Assistant U.S. Attorney Stephen Leon Guerrero. 09:02AM  
21 Also present with me is IRS Agent Sith Khamvongsa. Also 09:02AM  
22 present is co-counsel, Special Assistant U.S. Attorney Marie 09:02AM  
23 Miller. 09:02AM

24 MS. MILLER: Hafa adai, Your Honor. 09:02AM

25 THE COURT: Hafa adai. 09:02AM

1 MR. MARTIN: Your Honor, this is Mack Martin. I  
2 represent John Walker. I'm getting him on the other line. I  
3 had accidentally disconnected him, but he'll be on the phone  
4 in just a moment.

5 THE COURT: And is local Counsel, Jim Maher, also  
6 on or is it just you, Mr. Martin?

7 MR. MARTIN: Mr. Maher is on.

8 THE COURT: Okay. All right, thank you.

9 MR. PEREZ: Good morning, Your Honor, Peter Perez  
10 present with Mr. Reed by telephone.

11 THE COURT: Okay. Thank you.

12 MR. LUJAN: Good morning, Your Honor, -- Lujan  
13 and, you know, and also on the phone is Gregory Nicolaysen on  
14 behalf of Rufus Crowe and Mr. Nicolaysen will be arguing on  
15 behalf of Mr. Crowe.

16 MR. NICOLAYSEN: Good morning, Your Honor, Greg  
17 Nicolaysen here from Los Angeles.

18 MR. POLE: Attorney William Pole, Your Honor --  
19 go ahead.

20 THE COURT: Go ahead, go ahead.

21 MR. POLE: William Pole, Your Honor, on behalf of  
22 Randall Rogers. He's in Georgia.

23 THE COURT: Okay.

24 MR. MCCONWELL: Edward McConwell, Laura McConwell  
25 on behalf of Phillip Kapp, and Mr. Perez is on the phone too.

1 (Pause.) 09:03AM

2 THE COURT: All right. 09:03AM

3 MR. HAN: This is Ed Han for Hansen Helicopters. 09:03AM

4 THE COURT: Okay, and Mr. Nicolaysen, on behalf  
5 of Mr. Lujan, has Mr. Nicolaysen filed his pro hac vice in  
6 this case already? 09:04AM

7 MR. NICOLAYSEN: Yes, Your Honor, it was done two  
8 years ago. 09:04AM

9 THE COURT: Okay. All right. So he -- I haven't  
10 seen but I saw -- all right. Thank you. All right. Let's go  
11 for the first matter before the Court is the amended motion  
12 for a hearing to address potential conflicts and what I don't  
13 need is I don't need a repeat of anything that's contained in  
14 the briefs. 09:04AM

15 So beginning with the government, is there  
16 anything in addition to what's been filed that you wish the  
17 Court to be aware of? 09:04AM

18 MR. LEON GUERRERO: Yes, yes, Your Honor. Thank  
19 you. Stephen Leon Guerrero. So really, in addition to, you  
20 know, the arguments that were raised in our filing, it has  
21 come to our attention that there is in fact a joint defense  
22 agreement amongst the defendants and that was something we  
23 weren't aware of or sure of when we initially filed this  
24 motion, and because we've been made aware of that, you know,  
25 we're simply asking the Court to make sure that there's no, 09:05AM

1 you know, potential for conflict of interest in any way to be  
2 able to conduct an in camera review of that joint defense  
3 agreement to determine if there's any potential for conflict  
4 of interest. You know, the big concern, you know, that the  
5 government has is, we have Defendant Hansen who wasn't a  
6 defendant in the initial indictment, um, is a defendant now,  
7 and our concern is, if Defendant Hansen is paying the legal  
8 fees of its co-defendants, you know, there is a potential for  
9 conflict of interest if one of these defendants chooses to  
10 want to cooperate and assist the government against its  
11 co-defendants but can't because Defendant Hansen is paying its  
12 attorneys fees.

13 So, you know, that is a conflict of interest that  
14 the government is trying to avoid. The other thing, too, is  
15 you know, what we want to point out in addition is, you know,  
16 we had attorney Martin who, you know, it's our position, was  
17 representing Defendant Hansen and Defendant Walker at the same  
18 time. And so, you know, that was evident in the sense that  
19 you know, now, you know, they have attorney Han who's now  
20 representing Defendant Hansen. But, you know, since the  
21 indictment, you know, there's multiple layers of the potential  
22 for conflict of interest to arise.

23 At one point, attorney McConwell, and this was  
24 noted in our filing ECF 416, you know, we have attorney  
25 McConwell that sought to deregister aircraft with the FAA.

1 And what's important to note is these aircraft that he's  
2 looking to deregister belong to subsidiaries of Defendant  
3 Hansen, again, who at least at one time was being represented  
4 by attorney Martin.

5 So, you know, we have that potential conflict of  
6 interest where attorney McConwell, in essence, representing  
7 these Defendant Hansen subsidiaries and trying to deregister  
8 these aircraft with the FAA. We also have Defendant Crowe and  
9 Defendant Crowe either has a position and/or role with these  
10 Vanuatu subsidiaries. And the same thing with Defendant  
11 Crowe, he sought to deregister aircraft with the FAA, again,  
12 creating this potential layer of a conflict, not only with  
13 himself, but again, attorney Martin and others.

14 So, you know, that -- you know, the big thing  
15 with the government, Your Honor, bringing this motion is just  
16 really having a hearing to ensure that, you know, we point out  
17 the concerns that we have and, you know, the different  
18 scenarios that we believe that there may be a potential  
19 conflict of interest. And, you know, ultimately, it will be  
20 the Court to make that determination if a conflict or not even  
21 just an actual conflict but the potential for a conflict  
22 exists and that's merely what the government is just trying to  
23 do, we have an obligation to bring it to the Court's attention  
24 if we feel that there is a potential and that's what we did.  
25 And so with those arguments, Your Honor, we submit, unless my



1 co-counsel, SAUSA Miller, has anything else she'd like to add.

2 MS. MILLER: I do not. I do not. Thank you,  
3 Your Honor. Thank you, Stephen.

4 THE COURT: All right. Thank you. Let me begin  
5 with Mr. Walker's Counsel, Mr. Martin, you can go ahead and  
6 address if you have addition to add other than what's been  
7 filed?

8 MR. MARTIN: Your Honor, I accidentally  
9 disconnected myself, so when I picked up, Mr. Leon Guerrero  
10 was talking about Hansen and attorney's fees being paid.  
11 Anything before then, I didn't hear and I apologize. I  
12 accidentally disconnected, but let me just briefly say my  
13 technology, Your Honor, is not that great. Let me just --

14 THE COURT: Well, let me just -- I guess, if I  
15 can attempt to bring you up to speed, Counsel has just brought  
16 up that there in fact exists a joint defense agreement and  
17 then the obvious concern about the conflicts. He referenced  
18 Mr. McConwell may be representing subsidiaries of Hansen in  
19 attempts at deregistration. The Court has reviewed those  
20 requests, the deregistrations that were filed as exhibits and  
21 the conflicts that may be associated with that. So that's  
22 kind of where the government was. Go ahead, you can then now  
23 argue to the Court if you have anything you wish the Court to  
24 be aware of other than what's been filed.

25 MR. MARTIN: Your Honor, very briefly. I

1 represent John Walker. I don't represent Hansen, I don't  
2 represent anyone else. My loyalties are to John Walker. He's  
3 aware of that. He's previously executed a waiver of conflict  
4 of interest in this case as relation to all other defendants  
5 and on behalf of Hansen, a waiver. But there's -- I  
6 understand -- I've been doing this for a long, long time. I  
7 understand what a conflict is. And if the government wants to  
8 make an offer to us for us to cooperate against them, I'm sure  
9 willing to hear them. I don't think Hansen is going to impact  
10 my loyalty or duties to John Walker in any way shape or form  
11 if that's a concern of theirs. I will advise the Court that  
12 we all do have a common defense. Our common defense is we  
13 haven't done anything wrong, but that doesn't create a  
14 conflict of interest. I think the issues are clearly set out  
15 in the briefs filed by all the parties and I would stand on  
16 that, Judge.

17 THE COURT: All right. Thank you, Mr. Martin.  
18 Let me -- go ahead, I'm sorry.

19 (Pause.)

20 THE COURT: We may have lost Mr. Martin again.

21 MR. MARTIN: No, I'm here. I'm here, Judge. Can  
22 you hear me?

23 THE COURT: Yes, okay. Is that it, Mr. Martin?

24 MR. MARTIN: That's it, and I think my Counsel --  
25 my client's on the phone, if you need a waiver from him, he

1 can orally do it and if we need to do another one, we're happy  
2 to do that.

3 THE COURT: All right. Let me just move up the  
4 line. Mr. Perez, anything on behalf of Mr. Reed?

5 MR. PEREZ: Just briefly, Your Honor. First, we  
6 join in the opposition filed by co-defendants in Document 415  
7 and 417. I would just reiterate that my loyalty as Counsel is  
8 to Defendant Reed only. I would also point out that Mr. Reed  
9 also signed a waiver which was submitted to the Court  
10 previously.

11 I would just also submit that the government has  
12 made no threshold showing of any conflict and I would also  
13 just point out that the issue regarding the conflict based  
14 upon payment of fees was raised previously by the government  
15 addressed by this Court with Judge Manibusan and was denied  
16 back then and this is the same issue that's being raised again  
17 and I have nothing further to add other than that.

18 THE COURT: All right. Mr. Pole, anything to add  
19 on behalf of Mr. Rogers?

20 MR. POLE: Your Honor, I would just add that of  
21 course, again, my loyalty is to Mr. Rogers and he's only on  
22 one count. So that even if there was a conflict for the other  
23 defendants, which we don't see, it wouldn't be imputed to my  
24 client, Your Honor.

25 THE COURT: All right. On behalf of Mr. Kapp,

1 Mr. McConwell or Tony?

09:12AM

2 MR. MCCONWELL: This is Mr. McConwell, Your  
3 Honor. I join in that. My loyalty is to Mr. Kapp. He's also  
4 waived any potential conflict. I do not believe there's a  
5 conflict with regard to the administrative matters we've been  
6 dealing with, with regard to the FAA enforcement case or the  
7 letter, or e-mail that you got from me to another Counsel in  
8 this case urging them to go ahead and allow deregistration. I  
9 might point out to you they have blocked every deregistration  
10 of aircraft in the registry right now and I think they have  
11 something like 58 hold orders, so they're trying to block  
12 deregistration by Hansen of the right to deregister their  
13 aircraft. But my client has no objection to the network that  
14 I've done for the Vanuatu corporations and has executed the  
15 waiver.

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16 THE COURT: All right. Thank you, Mr. McConwell.  
17 On behalf of Mr. Crowe, Mr. Nicolaysen?

09:13AM

09:13AM

18 MR. NICOLAYSEN: Yes, thank you, Your Honor, Greg  
19 Nicolaysen from Los Angeles speaking on behalf of Mr. Crowe  
20 together with my co-Counsel David Lujan. Your Honor, I ask  
21 the Court to take note as our papers mention of the waiver of  
22 conflicts filed on February 22nd of 2019, PACER  
23 Document 2-0-4. That waiver resolves any issue of any  
24 potential conflict and there certainly was no actual conflict  
25 that was being raised by the government in its initial filing

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1 back in 2018. And so looking at February of 2019 forward in 09:14AM  
2 time up to the present time, the government has not addressed 09:14AM  
3 any circumstance that would suggest that during the period 09:14AM  
4 subsequent to the filing of the conflict waivers, which Judge 09:14AM  
5 Manibusan accepted, there has been anything to raise divided 09:14AM  
6 loyalties or any other type of conflict in regard to the 09:14AM  
7 representation of Mr. Crowe. And in my view, that this is 09:14AM  
8 simply, as our papers argue, an effort to delay the trial. 09:14AM

9 In regard to the filing of the amended motion, 09:14AM  
10 it's all in our papers, I won't repeat the argument here, but 09:14AM  
11 there is certainly no basis for any type of conflict inquiry 09:15AM  
12 or even for the filing of a supplemental waiver. There is no 09:15AM  
13 need for any additional waiver in regard to Mr. Crowe. 09:15AM

14 THE COURT: All right. Thank you, 09:15AM  
15 Mr. Nicolaysen. I apologize for butchering your name but I 09:15AM  
16 think I got it now. 09:15AM

17 MR. NICOLAYSEN: No, it's fine. 09:15AM

18 THE COURT: Mr. Han, on behalf of Hansen 09:15AM  
19 Helicopters, anything -- because you're -- I guess the amended 09:15AM  
20 complaint that is now Hansen formally as a defendant. 09:15AM

21 MR. HAN: Yes, Your Honor. Um, nothing else to 09:15AM  
22 add except the fact that I'd be loyal to the Hansen 09:15AM  
23 Helicopters, the corporation. 09:15AM

24 THE COURT: All right. Thank you. 09:15AM

25 MR. LEON GUERRERO: Your Honor, this is AUSA Leon 09:15AM

1 Guerrero, just a brief rebuttal.

09:15AM

2 THE COURT: Okay. Go ahead.

09:15AM

3 MR. LEON GUERRERO: Now, I would say that the,  
4 you know, the circumstances have changed and really those  
5 waivers that were previously submitted to the Court are  
6 outdated because at the time, Defendant Hansen was not a  
7 co-defendant in the case. So I would say that the  
8 circumstances have changed and really those -- the initial  
9 waivers that were provided to the Court really are no longer  
10 pertinent and they're outdated, given the current superseding  
11 indictment.

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12 THE COURT: All right.

09:16AM

13 MR. NICOLAYSEN: Your Honor, on behalf of  
14 Mr. Crowe, I'd like to respond since it was in response to my  
15 comment. The government has an obligation to make a prima  
16 facie showing that there is a reason to be concerned about a  
17 serious potential for conflict or an actual conflict. The  
18 mere fact that the corporate entity was not a defendant at the  
19 time the original conflict waivers were filed in February 2019  
20 and we now have the corporate defendant in this case, that is  
21 not a sufficient change of circumstance to suggest that there  
22 are divided loyalties that would warrant further inquiry. And  
23 the government needs to demonstrate that there is some basis  
24 for divided loyalties sufficient to conduct further inquiry in  
25 camera or otherwise. If the Court wishes to conduct further

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1 inquiry, I would recommend that that be done outside the 09:17AM  
2 government's presence and the Court can take oral waivers by 09:17AM  
3 phone at this hearing in an under-seal proceeding and we can 09:17AM  
4 have it resolved now. I don't think it's necessary, but I 09:17AM  
5 think the defendants would be prepared to do that if the Court 09:17AM  
6 feels that the need has arisen for a supplemental waiver. 09:17AM

7 THE COURT: No, the Court has reviewed the 09:17AM  
8 defendants' briefs and also the arguments with respect to the 09:17AM  
9 nature of the initial investigation and the government's 09:17AM  
10 awareness certainly since 2015 of the involvement of -- well, 09:17AM  
11 the newest defendant, Hansen Helicopters, and that the 09:17AM  
12 investigation really was -- was -- was geared towards them 09:17AM  
13 from the beginning. 09:18AM

14 The Court, I think, just needs to remind the 09:18AM  
15 lawyers to, you know, I'm sure the lawyers are aware of their 09:18AM  
16 duty under Rule 1.8 and just make sure that you guys remain in 09:18AM  
17 compliance with the rules and everybody's affirmatively stated 09:18AM  
18 their loyalty to their specific client -- the insistence of a 09:18AM  
19 defense agreement and whether or not compensation may or may 09:18AM  
20 not be coming from -- from -- from persons other than their 09:18AM  
21 client. So let's just make sure we remain cognizant of that 09:18AM  
22 and remain in compliance with that as well as 1.6 dealing with 09:18AM  
23 confidentiality with respect to your individual client. Okay? 09:18AM  
24 I don't think the Court needs to be concerned with that. The 09:18AM  
25 second motion before the Court is -- so the Court will take 09:18AM

1 that matter under advisement and will issue an order as soon  
2 as possible.

3 The other motion before the Court is motion for  
4 protective order by the government to schedule an inspection  
5 and to prevent harassment of the witnesses. Again, the Court  
6 has reviewed all the documents that have been filed  
7 previously. Mr. Leon Guerrero or Ms. Martin [sic], is there  
8 anything the government wishes to add with respect to that  
9 motion?

10 MS. MILLER: Yes, Your Honor, this is Marie  
11 Miller, can you hear me?

12 THE COURT: I'm sorry, Ms. Miller, I apologize.

13 MS. MILLER: Oh, that's okay. Can you hear me  
14 okay?

15 MR. MARTIN: Your Honor, may I interject  
16 something first?

17 THE COURT: And who is this?

18 MR. MARTIN: This is Mr. Martin, Your Honor. I  
19 represent Mr. Walker. I had a suggestion about this motion if  
20 I might interject and then if you want to proceed, that's  
21 fine.

22 THE COURT: Go ahead.

23 MR. MARTIN: That the government has also filed,  
24 issued 62 subpoenas for the production of these same identical  
25 helicopters addressing almost the same issues, and rather than



1 being repetitive, I was going to suggest we might set both 09:19AM  
2 arguments for the same time at a later date, because the same 09:20AM  
3 issues will virtually be addressed in those arguments that are 09:20AM  
4 going to be addressed here. And if the Court wants to 09:20AM  
5 proceed, that's fine, but I wanted to make that suggestion. 09:20AM

6 THE COURT: So Ms. Miller, what is the briefing 09:20AM  
7 period -- I assume, Mr. Martin, you're referring to a motion 09:20AM  
8 to quash the subpoenas then, there's a motion to quash that's 09:20AM  
9 pending; is that correct? 09:20AM

10 MR. MARTIN: That's correct, Your Honor. 09:20AM

11 THE COURT: Does anybody know what the briefing 09:20AM  
12 schedule is for that? I don't know it off hand. 09:20AM

13 MS. MILLER: Your Honor, there isn't anything 09:20AM  
14 scheduled yet in terms of hearing that motion and the 09:20AM  
15 government does not concede that the Rule 16 motion is the 09:20AM  
16 same as the Rule 17 motion. Those are two distinct procedural 09:20AM  
17 processes and it is inappropriate to say that they should be 09:20AM  
18 argued and heard at the same time. The motion for a 09:20AM  
19 protective order is a critical motion that should be heard and 09:20AM  
20 ruled on by the Court as soon as possible and since we have 09:20AM  
21 this hearing time and no one has before now recommended that 09:21AM  
22 we move it and combine it with the Rule 17 motion and I 09:21AM  
23 suggest we do go forward, Your Honor. 09:21AM

24 THE COURT: All right. Go ahead, Ms. Miller, 09:21AM  
25 then. Mr. Martin, we'll hear the argument and go from there. 09:21AM

1 MS. MILLER: Thank you, Your Honor. So I know 09:21AM  
2 Your Honor does not want to hear anything that has already 09:21AM  
3 been previously filed. I will however bring something to the 09:21AM  
4 Court's attention that the Court may not be fully aware of: 09:21AM

5 Number one, the FAA has tried to inspect these 09:21AM  
6 helicopters 29 times. There are 29 letters that have gone 09:21AM  
7 from the FAA to the defendants seeking repeatedly to inspect 09:21AM  
8 these helicopters to ensure that they are safe and air-worthy. 09:21AM

9 One of those requests was on Helicopter N No. 09:21AM  
10 9068-F, as in Frank. And that particular aircraft was one 09:22AM  
11 that crashed and killed a pilot on September 3rd of 2015. And 09:22AM  
12 the defendants continue to refuse to produce the helicopters 09:22AM  
13 for inspection by the FAA for years, making numerous excuses 09:22AM  
14 similar to the excuses that they made in response to the 09:22AM  
15 government's motion here, that it would be too difficult to 09:22AM  
16 pull the helicopters in, that it is too challenging, that is 09:22AM  
17 it would cost them too much money, and our response is, too 09:22AM  
18 bad. The defendants actually are the ones who sought the 09:22AM  
19 registration of all of these helicopters by the FAA. And when 09:22AM  
20 they sought that registration by the FAA, they certified under 09:22AM  
21 penalty of perjury that they were seeking the registration to 09:22AM  
22 comply with all of the FAA rules and conditions, and since 09:23AM  
23 then, they have done anything but comply with those rules and 09:23AM  
24 conditions. 09:23AM

25 In this particular case, Your Honor, there has 09:23AM

1 been a plea agreement entered into by an FAA inspector who 09:23AM  
2 admitted to his role in the honest services fraud and his role 09:23AM  
3 in issuing 30 airworthiness certificates, 3-0, to these 09:23AM  
4 defendants, without having actually conducted a proper 09:23AM  
5 inspection of either the aircraft or the legitimate paperwork 09:23AM  
6 tied to the aircraft. 09:23AM

7 Another thing that Your Honor hasn't seen in the 09:23AM  
8 pleadings is that there have been nine deaths associated with 09:23AM  
9 Hansen-owned helicopters, six serious injuries associated with 09:23AM  
10 Hansen-owned and -operated helicopters. We know that the 09:23AM  
11 defendants have, "deregistered" and "reregistered" aircraft in 09:24AM  
12 the Philippines before. 09:24AM

13 For example, Your Honor, one of the aircraft, 09:24AM  
14 N369TG, Mr. Crowe said that Echo Air owned that aircraft. 09:24AM  
15 Echo Air is one of the numerous Vanuatu corporations created 09:24AM  
16 by the defendants for, according to them, insurance purposes. 09:24AM  
17 And despite the fact that Mr. Crowe indicated to the FAA that 09:24AM  
18 that aircraft is owned by Hansen outright and, therefore, 09:24AM  
19 Hansen has the right to deregister it and to reregister it in 09:24AM  
20 the Philippines, the FAA also has certification from Venezuela 09:24AM  
21 that that identical aircraft is registered there by a third 09:24AM  
22 party. Every single helicopter was registered with the FAA. 09:24AM  
23 And another example is N444GJ. Every single request for 09:25AM  
24 paperwork regarding that aircraft, even though it was 09:25AM  
25 allegedly a Vanuatu-owned aircraft, the defendants asked that 09:25AM

1 all that paperwork be sent to Guam and this is something that  
2 they've done over and over and over again.

3 We have a letter that we produced to you, Your  
4 Honor, from the Philippines, indicating -- not only from the  
5 Philippines by the way, Your Honor, from Vanuatu, from  
6 Palawan, confirming that the aircraft that the defendants  
7 ostensibly deregistered here to reregister there were never  
8 in fact registered or their registrations were allowed to fail  
9 in the case of the Philippines.

10 I submitted to the Court yesterday an exhibit  
11 just to show you and to provide you with an example of just  
12 how outrageous the defendants' conduct is in relation to this  
13 particular case. The defendants submitted an exhibit in  
14 support of their motion to dismiss that the defendants  
15 represented was an exhibit relating to aircraft N831FG. But  
16 what the defendants did was they only submitted to the Court  
17 part of the file on N831FG. They submitted an export letter  
18 requesting deregistration of that aircraft. They submitted a  
19 deregistration confirmation. They submitted a letter from the  
20 FAA registering the aircraft after the export request and then  
21 the registration from the FAA. What they did not submit to  
22 this Court was a statement of the whereabouts of that aircraft  
23 showing that that aircraft never left Guam, despite the  
24 representations to the government that it was being exported.  
25 What they didn't produce to the Court was a letter from

1 Mr. Walker requesting the FAA registration after that aircraft  
2 was supposedly exported but we know it was never exported, nor  
3 did they produce to the Court another letter to the FAA,  
4 indicating that they were waiting for Vanuatu to confirm that  
5 the helicopter was never registered there and then they also  
6 didn't produce to the Court the Vanuatu confirmation that the  
7 aircraft was never registered there. We have letters from the  
8 defendants going to the FAA over the last ten years, talking  
9 about aircraft being exported, then saying, no, we never  
10 exported this aircraft, and meanwhile, the aircraft is in  
11 registration limbo, but we know, based on the information we  
12 received from the defendants, that these helicopters are  
13 making them millions of dollars a year, despite the fact that  
14 they have not been properly inspected.

15 Finally, Your Honor, they want to ostensibly  
16 remove the aircraft to the Philippines but we also produced a  
17 document for you from the Philippines referring to the  
18 defendants' utter defiance of civil aviation law and disregard  
19 of their responsibilities to the Philippines equivalent of the  
20 FAA as they have here.

21 Your Honor, you have the authority under Rule 16  
22 of the Federal Rules of Criminal Procedure to enter a  
23 protective order to allow the inspection of these helicopters  
24 and also to assure that they are not deregistered and not  
25 moved outside of the jurisdiction of the United States. When

1 you consider what has happened in this case and how the  
2 defendants have repeatedly, repeatedly lied to the FAA and  
3 misrepresented and they are still using these helicopters to  
4 transport pilots and mechanics, putting all these individuals  
5 in danger, we ask this Court to exercise your jurisdiction  
6 under the rule and under the case law that we cited to grant  
7 the motion for a protective order, to require the defendants  
8 to finally bring these helicopters back to Guam for a proper  
9 inspection by the government and to make them available to the  
10 government. And I don't wish to add anything else other than  
11 what was already previously filed with the Court regarding the  
12 witness tampering, any other issues. Thank you, Your Honor.

13 THE COURT: All right. Let's -- Mr. Martin, on  
14 behalf of Mr. Walker?

15 MR. MARTIN: Yes, Your Honor, thank you very  
16 much. Your Honor, I'm not sure that the government  
17 understands the purpose of Rule 16 discovery. They asked for  
18 discovery in this criminal case. They don't represent the  
19 Department of Transportation, they don't represent the FAA,  
20 they don't represent the Federal Bureau of Investigation, they  
21 don't represent Mr. Cislo, who's their star witness that they  
22 talk about in this case. Their one -- their alleged purpose  
23 for this is for safety and airworthiness and they talk about  
24 29 letters that have been sent ten years ago before I was even  
25 involved in this case. They admit they sent me one letter

1 that was attached to my motion. I believe it was 09:30AM  
2 December 12th saying, "Please tell us when we can inspect 09:30AM  
3 these helicopters" and I responded to the letter, I asked them 09:30AM  
4 to tell me what authority they had to do that. I said if you 09:30AM  
5 got a problem with it, we'll take it up with Judge Gatewood or 09:30AM  
6 call me on the phone. Neither one of those occurred. They 09:31AM  
7 didn't call me, we didn't take it up with Judge Gatewood. I 09:31AM  
8 figured they realized that they didn't have the authority to 09:31AM  
9 do that, so we went on. 09:31AM

10 Secondly, they talk about the case law in support 09:31AM  
11 of their motion for protective order. They cited no case law, 09:31AM  
12 Your Honor. Rule 16 doesn't -- the way I read the rule, 09:31AM  
13 doesn't give the government the authority to come in and 09:31AM  
14 inspect evidence that -- for materials that -- in a case, 09:31AM  
15 unless we're going to use it and I, in my motion said, we're 09:31AM  
16 not going to produce any helicopters, we're not going to use 09:31AM  
17 any helicopters at trial so we shouldn't -- we shouldn't 09:31AM  
18 produce it. 09:31AM

19 Thirdly, Your Honor, the thing that offends me 09:31AM  
20 the most, and I use that word very lightly, is the personal 09:31AM  
21 attacks on lawyers. The government has misrepresented in 09:31AM  
22 their motions things that my co-Counsel have been involved in, 09:31AM  
23 in this case. In particular, in reference to Mr. Cislo, they 09:32AM  
24 make blatant allegations that Mr. McConwell confronted and 09:32AM  
25 accosted Mr. Cislo, which did not occur. The government 09:32AM

1 finally in January provided to us a 302 that's been identified 09:32AM  
2 as FBI Hansen Document No. 046383, where during a proffer 09:32AM  
3 session, the government alleged that Mr. McConwell confronted 09:32AM  
4 him inside his hangar. Mr. Cislo, and I'm reading from the 09:32AM  
5 FBI 302 itself now, says "On Saturday, July 14th, a male 09:32AM  
6 individual initiated contact with Cislo outside, outside of 09:32AM  
7 his private hangar." I made representations to the Court, as 09:32AM  
8 an officer of the Court, quite honestly, what occurred by mere 09:32AM  
9 happenstance on July 14th, and for them to make some type of 09:33AM  
10 outrageous allegations that he tried to talk to him and he 09:33AM  
11 tried to confront him about the case, he didn't intimidate him 09:33AM  
12 at all, Your Honor. Mr. Cislo doesn't say that. Mr. Cislo 09:33AM  
13 says -- even mentions that Mr. McConwell advised him that he 09:33AM  
14 attempted to contact Cislo's attorney, they did not receive a 09:33AM  
15 reply, consistent with exactly what I put in the motion, Your 09:33AM  
16 Honor. No Counsel in this case has done anything 09:33AM  
17 inappropriate. And I find it kind of offensive that the 09:33AM  
18 government would allege that there's something done 09:33AM  
19 inappropriate by any Counsel. There's no basis for a 09:33AM  
20 protective order. We all know the rules of ethics in this 09:33AM  
21 case just like we know the rules relating to a conflict of 09:33AM  
22 interest. I ask the Court to deny the government's motion, 09:33AM  
23 Your Honor. 09:33AM

24 THE COURT: All right. Thank you, Mr. Martin. 09:33AM  
25 Mr. Nicolaysen, anything to add? 09:33AM



1 MR. NICOLAYSEN: Yes, Your Honor. Thank you. 09:33AM  
2 Rule 16 is a very narrow and specific rule in criminal 09:34AM  
3 proceedings. It deals with discovery by both sides. The 09:34AM  
4 issuance of protective orders provide restrictions under 09:34AM  
5 Rule 16 that focus on the production of information by the 09:34AM  
6 government typically by which parameters are being established 09:34AM  
7 regarding the use of such evidence by the parties and we have 09:34AM  
8 these protective orders in gang cases, identity theft cases, 09:34AM  
9 etc., which is all about regulating how evidence is going to 09:34AM  
10 be managed and used by the parties. 09:34AM

11 When the government seeks a protective order with 09:34AM  
12 respect to the defense, that protective order under Rule 16 09:34AM  
13 must be tailored to defense evidence. That's not what's 09:34AM  
14 happening here. I'll give an example. If the defendants 09:34AM  
15 designated as a trial exhibit, a particular FAA-approved part 09:34AM  
16 that was used on the helicopters during the time period of the 09:35AM  
17 indictment, 2012 up to May 2018 when the first indictment was 09:35AM  
18 filed, and we are going to be having testimony at trial 09:35AM  
19 regarding that part, part of our presentation regarding 09:35AM  
20 helicopters, then the Court would be well within its rights 09:35AM  
21 and the government likewise, to direct the defense to make 09:35AM  
22 that part available for inspection because that part is now 09:35AM  
23 being designated by the defense as a trial exhibit. Now 09:35AM  
24 that's not happening -- the defense is not going to be 09:35AM  
25 designating helicopters as defense exhibits. That's just not 09:35AM

1 going to happen. And therefore, the helicopters, which are 09:35AM  
2 the subject of this motion, do not fall within the purview of 09:35AM  
3 Rule 16. They are not reciprocal discovery from the defense 09:35AM  
4 to the government and the Court cannot issue any protective 09:35AM  
5 orders with regard to those helicopters because those 09:36AM  
6 helicopters simply don't fall within the parameters of Rule 16 09:36AM  
7 and the government has made it clear in its filings, and as 09:36AM  
8 recently as yesterday in Document 460, that their motion for 09:36AM  
9 protective order is being brought under Rule 16. It's 09:36AM  
10 referred to as, "the government's Rule 16 motion." So 09:36AM  
11 therefore, the request by the government for (background 09:36AM  
12 noise) to inspect the helicopters, order directing Hansen not 09:36AM  
13 to transfer these helicopters as part of some sort of a 09:36AM  
14 protective order, all of that has to be justified within the 09:36AM  
15 very narrow and specific criteria of Rule 16, and because the 09:36AM  
16 helicopters don't fall within Rule 16, they are not reciprocal 09:36AM  
17 discovery, they are not going to be trial exhibits, this 09:36AM  
18 Court, and I say this with respect, has no authority to order 09:36AM  
19 any inspection. And what the government is doing, is arguing 09:36AM  
20 its case as if it were before an administrative body. Marie 09:37AM  
21 Miller is from the Department of Transportation, she's well 09:37AM  
22 versed in FAA administrative procedures and the arguments that 09:37AM  
23 she has presented here, which pertain to which she considers 09:37AM  
24 safety issues, that there have been numerous requests to 09:37AM  
25 inspect, that in her judgment have been ignored, and so on all 09:37AM

1 of that, goes to the issue of the FAA and the regulatory  
2 agency having the authority to suspend or revoke  
3 registrations, suspend or revoke airworthiness certificates.  
4 That's the power of a regulatory agency, same thing with the  
5 FDA over a drug company, the ACF over a gun manufacturer and  
6 so on. The arguments presented by Ms. Miller are suited for  
7 the administrative environment where Hansen or whoever would  
8 be, you know, deemed the appropriate owner of the helicopters,  
9 would be subject to some administrative sanction for failing  
10 to satisfy the safety and other obligations including making  
11 the helicopters available for inspection. That's an  
12 administrative issue. That has nothing at all to do with the  
13 criminal proceeding or the narrow criteria under Rule 16. And  
14 I should emphasize that these helicopters, the vast majority  
15 of the ones that's listed in the superseding indictment, which  
16 for round numbers -- let's just use the number sixty, the vast  
17 majority of these helicopters have valid registrations and  
18 valid airworthiness certificates. In fact, registrations have  
19 three-year time tables and if Your Honor goes to [www.faa.gov](http://www.faa.gov)  
20 and you have the superseding indictment in front of Your Honor  
21 that has the table and all of these N numbers of the sixty  
22 helicopters and you just start typing these N numbers into the  
23 search engine on the home page, you'll get the profile of the  
24 helicopters and you will see that the vast majority of them  
25 have valid registrations. Well, in fact, valid registrations

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1 that expire either this year, 2021, even 2022. That means the  
2 FAA has been renewing these registrations during the period of  
3 the investigation of this case which goes back at least to  
4 2015 and earlier, and during the prosecution of this case.

5 So when the government complains, as it does,  
6 that the helicopters are unsafe, and that we have refused  
7 inspections, those administrative arguments should be directed  
8 to the FAA as part of a claim that maybe the registrations  
9 should not have been renewed, maybe they should be suspended  
10 or revoked. But this is a motion under Rule 16 and none of  
11 the arguments the government has presented in its papers or  
12 here today orally have any relevance whatsoever to Rule 16.

13 Let me just close by speaking about the  
14 chronology of the superseding indictment. If Your Honor goes  
15 through the superseding indictment with an eye to the time  
16 periods of the different counts, and if the Court please, I'll  
17 be glad to do it, I have yellow highlighted it so I could  
18 recite all the paragraphs in the superseding indictment. Your  
19 Honor will see that the government has consistently framed the  
20 chronology of this prosecution from year 2012 up through May  
21 of 2018, which is the doorstep of the filing of the initial  
22 indictment, which was filed on May 31, 2018.

23 The superseding indictment, which was filed in  
24 December 2019, a year and a half later, has one substantive  
25 count that has to do with registrations that they claim was,

1 you know, improperly done on June 10th of 2018, a couple of  
2 weeks after the first indictment. But other than that one  
3 ministerial charge, the entire superseding indictment is based  
4 on the same chronology as the original indictment, which  
5 doesn't go beyond May of 2018, and of course we are now in May  
6 of 2020, two years later.

7           So the government cannot properly argue that  
8 there is anything about the current helicopters that are  
9 flying that has any relevance to the charges in the  
10 indictment. There is no allegation of continuity of  
11 misconduct, or that the charged conspiracy are ongoing  
12 conspiracies. It'd be very different in a RICO case. We've  
13 all seen RICO cases where, let's just use a gang or a mafia  
14 family where the defendants are on trial as members of a RICO  
15 enterprise that is still in existence through the ongoing  
16 prosecution and all the way up through a trial. And so when  
17 the mob family bosses in New York are on trial for being a  
18 member of -- you know, being a leader of the Gambino family,  
19 while they're in trial and while the prosecution is ongoing,  
20 the RICO enterprise is considered to be still active. And so  
21 it's still ongoing criminal activities. That's one of the key  
22 centers between RICO and conspiracy. Conspiracy, as we see in  
23 this case, has bookends; it has a beginning and an end. And  
24 it's critical to recognize that the government is seeking to  
25 have Court orders issued for inspections that the Court is not

1 authorized to issue, but the government is misunderstanding  
2 that today's helicopters have nothing to do with the time  
3 frame of the charge, because there's no allegation of any  
4 continuity of misconduct, that there's any crime being  
5 committed in 2020 that is relevant to the charge in this case,  
6 unless the government is planning to supersede. And if they  
7 are, I ask the government through Your Honor, tell us now so  
8 that we understand that; otherwise, based on chronology alone,  
9 the concept of inspection is completely irrelevant because of  
10 the two-year lapse between May of 2018 when the indictment  
11 charges them and May of 2020, which is where we are today.  
12 Those are my arguments to Your Honor and I would ask that the  
13 government's motion be denied.

14 THE COURT: All right. Mr. Perez or  
15 Mr. McConwell on behalf of Defendant Kapp, anything to add?

16 MR. PEREZ: Your Honor, I join in the opposition  
17 of 422, 424, 428 and 434 and we rest on those as well as the  
18 oral arguments presented by Mr. Martin and Mr. Nicolaysen.

19 MR. MCCONWELL: This is Edward McConwell, Your  
20 Honor, if I could respond a little bit here. I could respond  
21 to everything that Ms. Miller said and believe me, she's only  
22 told you a fraction of the story in this matter. There is  
23 issues that she just brushed over and not given you the whole  
24 story.

25 One example you may not be aware of, but there's

1 a motion to dismiss on lack of jurisdiction that's pending 09:44AM  
2 right now, it's been filed before the Court dealing with the 09:44AM  
3 validity or invalidity of the airworthiness cert -- or the 09:44AM  
4 registration certificates themselves. 09:44AM

5 MR. MILLER: Your Honor, I'm sorry to interrupt 09:44AM  
6 but I'm going to object to Mr. McConwell arguing anything 09:44AM  
7 relating to the motion to dismiss. I didn't ignore it. We're 09:44AM  
8 not here to argue it. 09:44AM

9 THE COURT: All right. 09:44AM

10 MR. MCCONWELL: I'm bringing the matter to the 09:44AM  
11 Court's attention. I wasn't going to argue it, but I do want 09:44AM  
12 to give one example of something she did bring up that is very 09:44AM  
13 important in this case. She highlights 9068 Fox Trot. Now, 09:44AM  
14 that's an aircraft that had an accident in September of 2015 09:44AM  
15 and the Court -- the FAA was aware as of that time and 09:45AM  
16 actually back in April of 2015 of an issue with regard to the 09:45AM  
17 validity or invalidity to the aircraft registrations. They 09:45AM  
18 acknowledged in their search warrant affidavit with regard to 09:45AM  
19 the search warrant that was issued from Guam by Judge 09:45AM  
20 Manibusan that 9068 Fox Trot was registered in the Philippines 09:45AM  
21 and because of that, and because of international law, that 09:45AM  
22 was an invalid registration, and at that point, absolutely 09:45AM  
23 knew they did not have jurisdiction over that aircraft, yet 09:45AM  
24 they plowed ahead and ignored the fact they didn't have 09:45AM  
25 jurisdiction with regard to that aircraft and the 09:45AM

1 investigation that ensued from that, but it goes to the entire  
2 line of Vanuatu corporations. They were totally aware of the  
3 existence of them, the number and that they were foreign  
4 corporations. That is implications that we'll be dealing with  
5 later. I'm not going to go through everything she said.  
6 There is a different story. There's more evidence that would  
7 be -- would neutralize the thing that she said and we could  
8 explain it to you, but it would take too long to do that.

9 But I do want to go back to the Mr. Cislo thing  
10 at the airport. Mr. Cislo did not tell the truth to the FBI  
11 agents and that was an accidental meeting that occurred. We  
12 had no idea that he was going to even be there, didn't even  
13 knew he was. But for the way that has been misrepresented to  
14 the Court is very offensive and Mr. Martin's already spoke on  
15 my behalf and that's all I'm going to say about that, but I  
16 join in the pleadings that have been filed in this matter and  
17 ask that the motion for protective order be denied.

18 And I do have my question for you, my  
19 understanding, and I've been doing this for over 50 years,  
20 that a lawyer has the ability to be able to interview  
21 witnesses that are identified by the government or the  
22 plaintiff or the adverse party. The government seems to say  
23 that we can't do that and our clients are not supposed to by  
24 their conditions of release, but the lawyers and we have  
25 ethical standards we have to follow, that we've done nothing



1 wrong and there seems -- seems to say we did and I'd like to  
2 know whether we are allowed to interview witnesses. I will  
3 tell you that I had one witness in this case say that he was  
4 told not to talk to anybody, including their lawyers, and that  
5 appeared to come from the government.

6 THE COURT: All right. Thank you, Mr. McConwell.  
7 Mr. Pete Perez, Jr., on behalf Mr. Reed? Anything?

8 MR. PEREZ: No, Your Honor.

9 THE COURT: All right. Mr. Pole, on behalf of  
10 anything -- Mr. Rogers, anything you wish to add?

11 MR. POLE: Your Honor, just two things, one, we  
12 continue to object and have objected to the government's  
13 painting the defendants as being -- all defendants being in  
14 control of the helicopters. As we have pointed out and it's  
15 as well clear from the superseding indictment, Mr. Randy  
16 Rogers has no authority over those helicopters and has nothing  
17 to do with those helicopters and shouldn't be painted with a  
18 stroke as the government is trying to do here or in trial.

19 The only other thing I'd like to point out, Your  
20 Honor, obviously while we join with all other defendants in  
21 the motion, we're primarily concerned with the issue of the  
22 right to interview witnesses and I just wanted to point out  
23 that one of the cases that was cited was *United States versus*  
24 *Brumel-Alvarez*, which is 991 F.2d 1452, and the reason I want  
25 to point out is that was decided by the Ninth Circuit in 1993

1 that found a *Brady* violation where the government failed to 09:48AM  
2 provide a DEA memo about one of their star witnesses on -- 09:49AM  
3 asking for the truth and I just want to point out that even 09:49AM  
4 though that was 1993 and therefore before the U.S. Supreme 09:49AM  
5 Court in *Kyles v. Whitley*, 514 U.S. 419, which wasn't decided 09:49AM  
6 until 1995, that case is still consistent with the U.S. 09:49AM  
7 Supreme Court that said that issues of *Brady* must be provided 09:49AM  
8 to defense Counsel and is not that it is grounds for 09:49AM  
9 dismissal. I think -- but we absolutely have a right to 09:49AM  
10 interview witnesses to receive information and the government 09:49AM  
11 provided nothing to suggest that even if this Court has the 09:49AM  
12 right to sanction one defense attorney for alleged misconduct, 09:49AM  
13 that it would have a right to sanction all defense attorneys 09:49AM  
14 for the same misconduct and not allow for a proper defense, 09:49AM  
15 that is, the interviewing of witnesses. I have nothing 09:49AM  
16 further to add, Your Honor. 09:49AM

17 THE COURT: Thank you, Mr. Pole. Mr. Han, 09:49AM  
18 anything on behalf of Hansen Helicopters other than what's 09:50AM  
19 been argued? 09:50AM

20 MR. HAN: Nothing to add, Your Honor. 09:50AM

21 THE COURT: All right. Ms. Miller, briefly in 09:50AM  
22 response to the arguments you heard from defense. 09:50AM

23 MS. MILLER: Yes, Your Honor. First of all, 09:50AM  
24 Mr. Martin actually said the letters that the government sent 09:50AM  
25 to us were ten years old, that's absolutely not true. We have 09:50AM

1 been sending them letters as recently as last year requesting  
2 inspection of these helicopters. I have letters dated April  
3 29, 2015, June 23, 2015, July 8, 2015, then we can  
4 fast-forward to May 20, 2016, July 20, 2016. Let's move  
5 ahead, May 14, 2018, July 2nd, 2019. I can go on and on, Your  
6 Honor, but the point is that is absolutely a misstatement of  
7 fact.

8           The second thing is, Mr. Martin said that the  
9 government doesn't understand Rule 16 and I would disagree  
10 with that and I would also state the defense Counsel has  
11 basically just kind of skirted over the explicit language of  
12 Rule 16 which says that this Court has the authority to  
13 require the defendant to permit inspection by the government  
14 of tangible objects and it's not only those objects that the  
15 defendant intends to use in its case in chief because, again,  
16 a third misstatement by defense Counsel, which is that the  
17 government cited -- case law, the government did cite  
18 substantial case law to support its position, including case  
19 law that indicates that if the defendant intends to  
20 cross-examine any of the government's witnesses in a criminal  
21 case regarding evidence, that the government is entitled to  
22 view that evidence. It is not a violation of the defendant's  
23 Fifth Amendment privilege against self-incrimination and it is  
24 not necessary that the defendants use that evidence in their  
25 case in chief. And all that case law was cited by the

1 government to the Court, so I won't repeat it, but it is just  
2 completely ridiculous for defense to make that statement that  
3 no case law was cited.

4           The fourth thing, Your Honor, is I understand  
5 very well the distinction between administrative proceeding  
6 and a civil proceeding. As a matter of fact, it's going to be  
7 really interesting to hear what the defendants have to say  
8 when they turn around and argue that administrative  
9 proceedings are the most meaningful thing for the Court to  
10 consider, but in this case, yes, I'm an attorney with the DOT  
11 OIG. I'm also a former federal prosecutor with extensive  
12 experience in conspiracy cases.

13           And the fifth issue that I'd like to address as  
14 an experienced federal prosecutor is, a conspiracy is not  
15 completed until its abandoned. We don't have to supersede in  
16 order to argue, and we will argue, so all of the defense  
17 Counsel need to be put on notice right now, it's the  
18 government's contention that this conspiracy has not ended,  
19 the conspiracy has continued.

20           As a matter of fact, immediately after the  
21 indictment, the first indictment in this case, there was  
22 another accident by one of these helicopters that the  
23 defendants owned and that the defendants have refused to allow  
24 to be inspected.

25           The sixth thing I want to address is the Cislo

1 issue. This actually relates to the conflict of interest  
2 motion that was filed, Your Honor. If Mr. McConwell is  
3 calling Mr. Cislo a liar and saying that he did not disclose  
4 their interaction with each other truthfully to the FBI  
5 agent, then again, I want to put Mr. McConwell on notice that  
6 he will be called as a witness to testify under oath about  
7 where that meeting took place, when that meeting took place,  
8 what was said during the course of that meeting, because Mr.  
9 Cislo has confirmed for us that Mr. McConwell specifically  
10 told him that he should not be talking to him, he knew he  
11 shouldn't be talking to him, but he was still talking with him  
12 and Mr. Cislo said he felt intimidated.

13 So to address the last point that Mr. Rogers'  
14 Counsel brought up, the government isn't indicating in any way  
15 shape or form that the defense cannot talk to witnesses or  
16 understand what they're going to say. What we are indicating  
17 is that it is inappropriate and a violation of law to  
18 intimidate witnesses, number one, and number two, to offer to  
19 pay attorney's fees for witnesses because that is unduly  
20 influencing a witness and it goes into tampering with  
21 witnesses and that is what we object to. I have nothing  
22 further to say, Your Honor. Thank you.

23 MR. NICOLAYSEN: Your Honor, I'll be happy to  
24 respond. This is Greg Nicolaysen on behalf of Defendant --

25 MS. MILLER: No, Your Honor, I'm going to object

1 to Counsel responding. The way these arguments go is, we  
2 filed the motion --

3 THE COURT: That's fine. Ms. Miller, that's all  
4 right. All right. The Court has heard enough. The Court  
5 will take the matters under advisement, will issue its  
6 recommendation and decision as soon as possible.

7 MS. MILLER: Thank you, Your Honor.

8 THE COURT: Thank you everybody.

9 (Proceedings concluded at 9:55 a.m.)

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11 -----  
12 CERTIFICATE OF OFFICIAL REPORTER

13  
14 CITY OF HAGATNA )  
15 TERRITORY OF GUAM ) ss.  
16 )

17 I, Veronica F. Flores, Official Court Reporter for  
18 the United States District Court of Guam, do hereby certify  
19 the foregoing pages, 1 to 38, to be a true and correct  
20 transcript of the proceedings held in the above-entitled  
21 matter to the best of my ability.

22 Dated this 11th day of May 2020.

23  
24 /s/Veronica F. Flores  
25 Veronica F. Flores